MESSRS. YONG & CO.

v.

WEE HOOD TECK DEVELOPMENT CORP. LTD. (2)

FEDERAL COURT, KUCHING
SALLEH ABAS LP
LEE HUN HOE CJ (BORNEO)
GEORGE SEAH FJ
[CIVIL APPEAL NO. 176 OF 1983]
16 JUNE 1984

CIVIL PROCEDURE: *Application for leave to appeal - Section 74, Courts of Judicature Act 1964 (as amended).*

The application was for leave to appeal to the Yang di-Pertuan Agong under s. 74 of the Courts of Judicature Act 1964 (as amended). The trial Judge had found the allegations against the appellants proved and had awarded damages to the respondents. The Federal Court had agreed with the findings of the trial Judge and dismissed the appeal.

Held:
Leave must be refused. The intended appeal substantially involved factual grounds in that there were concurrent findings by the trial Judge and the Federal Court as to the allegations pleaded in the statement of claim.

[Application dismissed.]

Legislation referred to:
Courts of Judicature Act 1964, ss. 74, (1)(a)(i)

For the appellants - A. Liew; M/s. Goh & Liew
For the respondents - Mohamed Asfar Nassar (Thomas with him); M/s. Thomas & Co.

JUDGMENT

George Seah FJ:

This is an application for leave to appeal to the Yang di-Pertuan Agong under s. 74 of the Courts of Judicature Act 1964 (as amended) and it is supported by an affidavit affirmed by Goh Leng Chua, Counsel for the appellants. The application is opposed by the respondents. The brief facts are these. The respondents sued the appellants for negligence and breach of contract as their solicitors. It was alleged in the pleading that the existence of such negligence and breach of duty was fraudulently concealed from the respondents by the appellants. The trial Judge found the allegations proved and awarded damages to the respondents in the total sum of RM136,898.12 plus interest and costs to be taxed. The Federal Court agreed with the findings of the learned trial Judge and dismissed the appeal with costs.

Although the matter in dispute in the appeal exceeds the sum of one hundred thousand dollars, we refuse leave on the ground that it appears that the intended appeal substantially involves factual grounds in that there are concurrent findings by the learned trial Judge and the Federal Court as to the allegations pleaded in the statement of claim [see the proviso to s. 74 (1)(a)(i) of the Courts of Judicature Act 1964 (as amended)]. The application is therefore dismissed with costs.

Also found at [1984] 2 CLJ 285